

Chua, Tan Ban Chey and Goh Kim in the commission of the said offence of robbery which was committed in consequence of your abetment and that you have thereby committed an offence punishable under sections 109 and 392 of the Penal Code."

In the case of the first three appellants there was nothing to be said as to conviction or sentence except that the sentence of whipping was wrongly imposed. With this variation their appeals were dismissed.

In the case of the 4th appellant a serious question arose. The principal evidence against him consisted of a confession made by a co-accused to a Magistrate and duly proved at the trial. Apart from this the most that could be said was that some of the evidence tended to corroborate parts of the confession.

Section 30 of the Evidence Enactment, which alone makes it possible to consider such a confession, merely says that the Court may take into consideration such confession. No legislation can add to the value of such a confession as evidence. We consider that its value is less than that of the evidence of an accomplice because it was made in the absence of the appellant, was not made on oath nor subject to cross-examination, and usually in such cases the person making the confession attributes the chief blame to others.

In the circumstances we do not consider that the evidence against the 4th appellant was sufficient, and his appeal is allowed and conviction quashed.

Conviction Quashed.

KRISHNAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) Decembre 4, 1947]

Negligent driving — Right of other road users — gross negligence — What is — Penal Code, S. 304A.

Where the accused person is charged for causing death by the negligent driving of a lorry, the prosecution must prove that he was responsible for some act or omission while driving the lorry which showed such carelessness or lack of consideration to the rights of other road users that the only conclusion that can be come to is that the act or omission amounted to gross negligence on his part. It is essential to elicit the evidence to show the actual situation with which the driver was faced in relation to his speed and other factors of driving and whether he got into this situation through his own or another's carelessness or rashness. The fact of knocking down a pedestrian on the road is not *ipso facto* conclusive of gross negligence.

CRIMINAL APPEAL.

P. V. Charry for Appellant.

W. N. McCall for Respondent.

Laville, J. : — In this case accused was charged under Section 304A, Penal Code, with causing the

death of a Tamil at 5.30 p.m. on 21.7.47 at Jalan Mahmoodiah, Johore Bahru, by doing a negligent act, i.e. driving lorry No. 594860 in a negligent manner, and sentenced on being found guilty to 6 months R.I.

The accused was unrepresented, and did not cross-examine any of the witnesses for the prosecution. The points to be proved by the prosecution in this charge is that accused in driving the lorry showed negligence in his handling of the lorry, i.e. he was responsible for some act or omission while driving the lorry which showed such carelessness or lack of consideration of the rights of other road users that the only conclusion that can be come to is that the act or omission amounted to gross negligence on his part.

The only evidence touching this given by the prosecution is that accused was travelling on the crown of the road coming down-hill, that on seeing an approaching car 30 ft. away he swerved to his left and knocked down the Tamil. There is no attempt on the part of the prosecution to ascertain from the eyewitness facts which are pertinent to the question of the accused's guilt or innocence; for instance, the distance between the lorry and the Tamil when the witness first saw them, the position of witness' car on the road, the speed of the lorry at the time, whether its brakes were in good order and could or ought to have been applied, and whether it was possible for a vehicle to avoid the on-coming car and at the same time pass between it and the Tamil. It is essential in cases of this nature to elicit evidence to show the actual situation with which the driver was faced in relation to his speed and other factors of driving and whether he got into this situation through his own or another's carelessness or rashness.

In my view there has not been a full and proper trial of the guilt or innocence of the accused, and the fact of knocking down a pedestrian on the road is not *ipso facto* conclusive of gross negligence. At the same time it cannot be doubted that the Tamil was knocked down by the lorry and that such a thing calls for enquiry as to what amount of negligence was displayed by the driver thereof.

For these reasons I set aside the conviction and sentence and order a retrial before another District Judge.

*Conviction Set Aside
— Re-Trial Ordered.*